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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SONJA HAWKINS, Defendant and Appellant.	B213707 (Los Angeles County Super. Ct. No. BA344506)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles F. Palmer, Judge. Affirmed as modified, and remanded with directions.

Jeanine G. Strong, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr., and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Sonja Hawkins (appellant) of one count of assault with a deadly weapon (count 1; Pen. Code, § 245, subd. (a)(1))[1] and found true the allegation that appellant personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)). The trial court sentenced appellant to three years in state prison for the assault count, and struck punishment on the great bodily injury finding pursuant to section 1385.[2] The trial court awarded appellant 165 days in presentence custody credits, consisting of 144 days of actual custody credits and 21 days of conduct credits.

On appeal, appellant contends the trial court erred by limiting her conduct credits to 15 percent of her actual custody credits pursuant to section 2933.1. The People concede that appellant's contention is correct. We remand the matter with directions to the trial court to enter a new judgment awarding appellant presentence custody credits pursuant to section 4019. The judgment is affirmed in all other respects.

BACKGROUND

On August 3, 2008, Iris Green (Green) and her acquaintance Mark Anthony (Anthony) were drinking alcoholic beverages in a public park. Green left the park and returned to find Anthony passed out on the ground. As Green was trying to rouse Anthony, appellant approached Green and began yelling at her. Appellant was angry at Green for leaving Anthony alone in the park while he was passed out. Appellant forcibly removed Green's jacket and cut Green's right and left arms with a box cutter. Another woman came up behind Green and restrained Green from behind. As the woman restrained Green, appellant cut Green's left arm approximately three more times. Green grabbed the box cutter while appellant was still holding it and a struggle ensued between the two individuals. Green began moving toward a public street. Appellant and the woman who was restraining Green panicked and fled.

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1 All subsequent references are to the Penal Code unless otherwise indicated.

2 Section 1385 subdivision (c)(1) permits the trial court to strike or dismiss an enhancement, or to "instead strike the additional punishment for that enhancement in the furtherance of justice . . . ."

Green bled profusely as a result of the wounds that appellant had inflicted upon her. After Green contacted the police, paramedics arrived and bandaged her wounds. She later went to the hospital where she received six stitches.

Los Angeles Police Department Detective Adrian Chin testified that appellant waived her *Miranda*[3] rights and denied any involvement in Green's assault. Appellant told Detective Chin that Green's blood had gotten on appellant's hands while appellant was attempting to assist Green.

The jury found appellant guilty of one count of assault with a deadly weapon (§ 245, subd. (a)(1)) and found true the allegation that appellant personally inflicted great bodily injury upon Green (§ 12022.7, subd. (a)).

The trial court sentenced appellant to three years in state prison for the offense of assault with a deadly weapon. The trial court struck punishment on the great bodily injury finding pursuant to section 1385.[4] The trial court awarded appellant 144 days of actual custody credits, but limited appellant's conduct credits to 15 percent of the 144 days in custody, i.e., 21 days.

DISCUSSION

Appellant argues that the trial court erred by limiting appellant's conduct credits to 15 percent of actual days served pursuant to section 2933.1.

Section 2933.1, subdivision (c) provides that "[n]otwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement . . . following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person

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3 *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

4 The trial court explained its ruling as follows: "Pursuant to Penal Code section 1385, in the interests of justice, the punishment for the enhancement alleged pursuant to Penal Code section 12022.7(a) is stricken for the following reasons: This is the defendant's first serious or violent felony conviction and the first conviction of a crime of violence of any sort; the defendant's criminal history is not substantial[.]"

specified in subdivision (a)." The individuals specified in section 2933.1, subdivision (a) are those individuals currently "convicted of a felony offense listed in subdivision (c) of Section 667.5[,]" i.e., violent felonies. "Thus, a person who spends time in presentence (including pretrial) confinement and is eventually convicted of a violent offense may earn, as a credit against his prison sentence, no more than 15 percent of the actual time he spent in presentence confinement . . . ." (*In re Reeves* (2005) 35 Cal.4th 765, 774 (*Reeves*).)

Section 667.5, subdivision (c) enumerates a number of felonies that qualify as "violent felonies," including "[a]ny felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 . . . ." (§ 667.5, subd. (c)(8).)

Here, the prosecution charged appellant with assault with a deadly weapon (§ 245, subd. (a)(1)) and alleged that appellant personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)). The jury found appellant guilty of the charged offense and found true the great bodily injury allegation. Although assault with a deadly weapon is not one of the enumerated violent felonies under section 667.5 subdivision (c), appellant's conviction qualified as a "'violent felony'" because of the charged and proven great bodily injury allegation. (§ 667.5, subd. (c)(8).)

The trial court, however, struck punishment on the great bodily injury finding pursuant to section 1385. Thus, the issue is whether the 15 percent limit under section 2933.1 still governs the calculation of appellant's presentence custody credits. The Supreme Court's decision in *Reeves*, *supra*, 35 Cal.4th 765, is instructive.

In *Reeves*, the defendant was serving a five-year term for a violent felony and a concurrent 10-year term for a nonviolent felony. (*Reeves*, *supra*, 35 Cal.4th at p. 769.) Once the defendant finished serving the five-year term for the violent felony, the question presented was whether the 15 percent limitation on postsentence worktime credits under

section 2993.1[5] still applied to the remaining five-year term that he was serving for the nonviolent felony. The People argued that the 15 percent limit applied to the five-year term for the nonviolent felony because the defendant had been convicted of a violent felony along with the nonviolent felony. Because of this conviction, the People argued, the defendant remained a person "convicted of a felony offense listed in subdivision (c) of Section 667.5[,]" (§ 2933.1, subd. (a)) during the entirety of his 10-year sentence, even after he completed his five-year term for the violent felony. (*Reeves, supra,* at pp. 770–771.)

The Supreme Court rejected the People's argument. (*Reeves, supra,* 15 Cal.4th at pp. 780–781.) It held that once the defendant had completed his five-year term for the violent felony, the 15 percent credit limitation under section 2933.1 no longer applied to the remaining five-year term he was serving for the nonviolent felony. The Court explained that "section 2933.1 (a) has no application to a prisoner *who is not actually serving a sentence for a violent offense*; such a prisoner may earn credit at a rate unaffected by the section." (*Reeves, supra,* at p. 780, italics added.) Once the defendant in *Reeves* had served the full prison term on the violent felony, the fact that he had been convicted of a violent felony was a "historical fact" that did not trigger application of section 2933.1 on the remaining term for the nonviolent felony. (*Reeves, supra,* at p. 777.)

Even though *Reeves* concerned postsentence credits, we agree with appellant that the Court's reasoning applies equally in the present context of presentence credits. The trial court sentenced appellant to three years and struck punishment on the great bodily injury finding. Thus, appellant is "not actually serving a sentence for a violent offense[.]" (*Reeves, supra,*15 Cal.4th at p. 780; see also *In re Phelon* (2005) 132 Cal.App.4th 1214, 1219–1220 [section 2993.1 does not apply where defendant is convicted of a violent felony but punishment is stayed pursuant to section 654; *In re Gomez* (2009) 179 Cal.App.4th

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5 Section 2933.1, subdivision (a) provides: "Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent worktime credit, as defined in Section 2933."

1272, 1279–1280 [same].) Accordingly, section 4019,[6] and not section 2933.1, should govern the rate at which appellant earned her presentence credits. The People agree with this analysis and concede that "the matter should be remanded with directions that the trial court enter a new judgment awarding defendant presentence custody credits calculated under section 4019, rather than under section 2933.1."

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[6] Section 4019 permits a prisoner, "following arrest and prior to the imposition of sentence for a felony conviction," to earn additional credit for days spent in custody performing assigned labor and complying with rules and regulations. (§ 4019, subds. (a)(4), (b), (c), and (f).) Under this section, effective January 25, 2010, "a term of four days will be deemed to have been served for every two days spent in actual custody[.]"

DISPOSITION

We modify the judgment to strike the award of presentence custody credits. We remand the matter with directions that the trial court enter a new judgment awarding appellant presentence custody credits calculated under section 4019, rather than under section 2933.1.[7] The judgment is affirmed in all other respects.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ

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[7] We reject appellant's request for an order directing the Department of Corrections and Rehabilitation to calculate appellant's release date pursuant to section 2933. The record before us contains only those events that occurred up until and including sentencing. Therefore, the issue of appellant's entitlement to *postsentence* credits is not properly before us in this appeal.